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Revisiting Planned Relocation as a Climate Change Adaptation Strategy: The Added Value of a Human Rights-Based Approach

Mariya Gromilova*

1. Introduction

*'I still remember that fateful day, when I lost everything'*¹

This could be an intriguing prologue from a TV drama, but sadly, this is a quote from a real interview with one of the former residents of Lohachara Island – the island whose submergence was reported by Indian researchers in December 2006.² Jyotsna Giri had been living on Lohachara Island for more than forty years, had a family and quite a successful household there. Tides had never been benevolent to the islanders, slowly washing away crops and constructions. Among other things, the only tube well, which provided the island with drinking water, was eroded. This induced people to travel for water to the surrounding islands.

Upon her return from one of these regular trips for water, Jyotsna Giri found half of her house had been washed away. Slowly, the entire island became submerged. More than 4,000 people were rescued and rehabilitated to a refugee colony. Jyotsna Giri and her family remained in refuge for a few days and then moved to the northern part of the island where they constructed a new house. They have now been living there for more than 15 years, with no agricultural land or cattle, working hard as daily labourers.³

The unfortunate story of Jyotsna Giri, a story of someone who had to relocate due to the critical inundation and the rising sea level, is not a unique case in global history. In 1995, half of Bhola Island in Bangladesh was permanently flooded, forcing half a million people to relocate.⁴ In 1999, two Kiribati islands, Tebua Tarawa and Abenua, completely disappeared underwater.⁵ Among others are the Cartaret Islands in Papua New Guinea, where in 2005 it was decided to relocate 1000 residents to Bougainville, a larger island 62 miles away.⁶

* PhD Researcher, Department of European and International Public Law, Tilburg Law School, Tilburg Sustainability Centre, the Netherlands, email: M.Gromilova@uvt.nl. I would like to thank the anonymous referees for their useful comments and the editorial board of the Utrecht Law Review for careful editing of this article. As well I thank Professor Jonathan Verschuuren and Professor Nicola Jägers for their valuable and constructive advice and support. All errors, however, remain mine.

1 WWF-India, *Sundarbans: Future Imperfect Climate Adaptation Report*, WWF-Ind Report, 2010, p. 9.

2 'Disappearing world: Global warming claims tropical island', *The Independent*, 24 December 2006, available at <<http://www.independent.co.uk/environment/climate-change/disappearing-world-global-warming-claims-tropical-island-429764.html>> (last visited 9 December 2013).

3 WWF-India, *supra* note 1, p. 9.

4 E. Wax, 'In Flood-Prone Bangladesh, a Future That Floats', *The Washington Post*, 27 September 2007, available at <<http://www.washingtonpost.com/wp-dyn/content/article/2007/09/26/AR2007092602582.html>> (last visited 9 December 2013).

5 J. Vidal, 'Pacific Atlantis: first climate change refugees', *The Guardian*, 25 November 2005, available at <<http://www.guardian.co.uk/environment/2005/nov/25/science.climatechange>> (last visited 9 December 2013).

6 O. Brown, *Migration and Climate Change*, IOM Migration Research Series no. 31, 2008, p. 26.

The consequences of such relocations are often dreadful. The human influx to an already populated territory often implies an increasing competition for scarce resources, including jobs, food and water; an overwhelmed social infrastructure; and aggravated cultural and ethnical tensions.⁷ This ultimately impacts economic, political and social stability and the human rights of the actors involved (both those who have to relocate and host populations).⁸

At the same time, the present rate of climate change and the prognoses for the future confirm that for some regions, at a certain point in time, perhaps sooner than we expect, resettlement will be the only remaining option. According to estimates, 600 million people live in areas within 10m above sea level today.⁹ As emphasized by the Intergovernmental Panel on Climate Change (IPCC), the present-day sea-level change and other negative impacts associated with climate change have a great potential impact on human populations living in coastal regions and on islands,¹⁰ posing for the most vulnerable (e.g. small island states) 'risks to their sovereignty or existence'.¹¹ Overall, it is estimated that up to 2 million people are threatened with relocation due to the sea-level rise in the Indo-Pacific and Caribbean region within the next century.¹²

These deplorable prognoses call for urgent action to mitigate climate change and to implement the adaptation strategies, which will help people to remain on their land. Nevertheless, there is a swiftly emerging group of scientists and politicians who share pessimistic views on the financial and resource potential of the small island states in the Indo-Pacific region to adapt to changing climates and to protect themselves against sea-level rises. The adaptation funds available under the climate law framework demonstrate that there is a huge gap between the money required for adaptation and the sources which are available.¹³ Whereas the costs of adaptation to climate change in developing countries are estimated to be in the range of USD 75 to USD 100 billion per year between 2010 and 2050.¹⁴ Thus far, only about USD 2.23 billion has been deposited in existing adaptation funds, and only USD 1.22 billion of this finance has been approved to support projects and programmes.¹⁵

These simple calculations on adaptive and financial capacity, in conjunction with the prognoses for the future, allow the claim to be made that eventually the sea-level rise will induce these vulnerable populations and communities to leave their land and will require them to search for shelter elsewhere.¹⁶ Since most of the threatened populations largely lack resources to accommodate the relocation on their own, they will greatly rely on assistance in relocation by other states and institutions. The way planned relocation will be managed thenceforth is one of the most definitive moments for the lives of these people. In this regard, past experiences with planned relocations are not really comforting, showing how dramatic the failures in planned relocations can be. Hence, there is a need for an approach that can make planned relocation a more successful and positive experience for all the actors involved. This article aims

7 M. Werz & M. Hoffman, 'Climate Change, Migration, and Conflict', in C.E. Werrell & F. Femia (eds.), *The Arab Spring and Climate Change: A Climate and Security Correlations Series*, Centre for American Progress, 2013, p. 37.

8 R. McLeman, *Climate Change, Migration and Critical International Security Considerations*, IOM Migration Research Series no. 42, 2011; see also L. Elliott, 'Climate Migration and Climate Migrants: What Threat, Whose Security?', in J. McAdam (ed.), *Climate Change and Displacement: Multidisciplinary Perspective*, 2010, pp. 176-190.

9 R.J. Nicholls et al., 'Sea-level rise and its possible impacts given a "beyond 4°C world" in the twenty-first century', 2011 *Phil. Trans. R. Soc.* 369, pp. 161-181.

10 IPCC, *Fourth Assessment Report: Climate Change 2007, Working Group I Report: The Physical Science Basis, Observations: Ocean Climate Change and Sea Level*, Ch. 5, p. 408.

11 IPCC, *Fourth Assessment Report: Climate Change 2007, Working Group II: Impacts, Adaptation and Vulnerability, Small Island States*, Ch. 16, p. 736.

12 Nicholls, *supra* note 9, p. 12; While the focus on the small island states in this article was chosen due to the pressing urgency of the problem and already occurring cases of climate-induced displacement, the issue is in fact global in its scale. According to the UN Secretary-General, estimations of the total number of people who would have to migrate in response to climate change by 2050 lies between 50 and 350 million. See: *UN Secretary-General Report, Climate change and its possible security implications*, UN doc A/64/350, 11 September 2009, Para. 54.

13 According to Climate Funds Update there is USD 1.22 billion available to support all projects and programmes, while the World Bank Group estimated in 2010 that the costs of adaptation to climate change in developing countries are in the range of USD 75 to USD 100 billion a year between 2010 and 2050.

14 The World Bank Group, *The Costs to Developing Countries of Adapting to Climate Change: New Methods and Estimates*, (The Global Report of the Economics of Adaptation to Climate Change Study, Consultation Draft), 2010, p. 64.

15 Climate Funds Update, 'Climate Finance Thematic Briefing: Adaptation Finance', 2012 *Climate Finance Fundamentals*, no. 3, <<http://www.odi.org.uk/sites/odi.org.uk/files/odi-assets/publications-opinion-files/7910.pdf>> (last visited 9 December 2013).

16 Nicholls, *supra* note 9, p. 3.

to demonstrate that a human rights approach is a tool that can serve this goal. This article, therefore, proceeds with the following line of argumentation.

In Section 2, the main considerations about planned relocation as an adaptation strategy are presented. Namely, it is discussed that despite an official acknowledgment of this strategy as an adaptation response, planned relocation remains disregarded and undeveloped (both technically and theoretically). Drawing upon academic and political discussions, several reasons for this neglect are identified. It is shown that there are indeed reasons to be sceptical about this strategy, yet it is also claimed that, since the strategy is rapidly becoming the only way for some populations and communities to in fact survive climate change, there is a need to promote this adaptation response.

Section 3, therefore, suggests an approach that can play a strong role in re-establishing the reputation of planned relocation as an adaptation strategy. For this purpose, this section argues that as planned relocation has a tendency to lead to great human rights costs, it is crucial to have a full understanding of the rights that are particularly threatened and must be secured during the implementation of planned relocation. Section 3.1, therefore, presents an extensive analysis of the human rights at risk. This analysis bases itself on the core universal human rights treaties (the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR)) as well as on other important and relevant international human rights conventions and documents. Section 3.2 introduces a human rights-based approach as one that can diminish the negative impacts of planned relocation on human rights, and ensuring that it can be carried out successfully. Further sub-sections (3.2.1, 3.2.2) present and scrutinise this approach. Namely, a difference between current human rights law as being applicable to the relocation framework and a forward-looking human rights-based approach is presented and explained in these sub-sections. Accordingly, the limitations of current human rights law are analysed, and it is explained why a forward-looking human rights-based approach has more opportunities. Ultimately, Section 3.3 presents some practical guidelines in the form of relevant questions for policy-makers. In Section 4 conclusions are drawn.

It has to be clarified that this article mainly focuses on the small island states in the Indo-Pacific region, as they currently present the most clear-cut example of the populations in demand for planned relocation. Yet, the findings are also very much applicable to more general debates on climate-induced displacement, migration and population resettlement. Therefore, the suggested approach is relevant for other regions of the world, where, at some point, planned relocation will be required.

2. Planned relocation in the current discourse on climate change and human mobility

The threat of submergence facing certain islands and coastal areas is evident and recognized by scientists and politicians. This logically brings to the forefront of the climate change discourse the question of what to do with people whose situation is critical, when it is physically impossible for them to remain on their land and at the same time when they largely lack the capacity to relocate without assistance and support.

Planned relocation, or as it is often referred to – resettlement¹⁷ – has already been acknowledged by the Conference of the Parties (COP) to the United Nations Framework Convention on Climate Change (UNFCCC) as an adaptation strategy. Essentially, it implies that people are moved from their place of habitat that no longer sustains their living, by the actions of governance or other organizational structure and are then resettled in a new place.¹⁸ The 2010 Cancun Agreement, which along with planned relocation

17 Cancun Adaptation Framework (CAF) as part of the Cancun Agreements at the 2010 Climate Change Conference in Cancun, Mexico (COP 16/ CMP 6), Para. 14 (f); Even though planned relocation is an official term used by the COP16 to the UNFCCC, in literature and debates the term resettlement has been often used to describe the same strategy. Therefore, this article uses both terms and treats them as synonymous.

18 The Parties to the UNFCCC at COP 16 did not provide an explanation for these different kinds of mobility. Nevertheless, it seems possible to draw the main facets of each type. The difference between these adaptation responses in a nutshell can be formulated as follows: migration occurs voluntarily, because people decide to move elsewhere; displacement means that people are induced to move due to some climate change effects (such as the case of floods or if their homes are destroyed by some climate-related disasters); planned relocation implies that people are moved by the actions of governance or another organizational structure and are settled in a new place.

acknowledged migration and induced displacement, invited the Parties to enhance understanding and cooperation with regard to these adaptation strategies.¹⁹

Interestingly, while there are certain initiatives with regard to the issue of voluntary climate-related migration and climate-induced displacement, on the possible responses to these movements, their consequences and associated risks, the issue of planned relocation of threatened communities, as identified above, has not received much attention in the discourse on climate change.²⁰ Scholars and politicians are largely reluctant to consider this strategy and to start creating action plans. There are several factors which can explain this.

One of the main obstacles appears to be the difficulty in deciding whether the planned relocation is required at all and in identifying the optimal time for starting it. As has been mentioned, there is a lack of agreement with regard to the ongoing rate and scale of climate change, the resulting sea-level rise and other effects that can cause movements. As these processes are usually gradual and slow, some scholars and politicians argue that at the current moment there are no sufficient reasons to believe that forced and planned resettlement will be required. These valid concerns have indeed been raised by several scholars. For instance, Brown claims that: '[S]o far the publicized examples of forced migration caused by anthropogenic climate change are more anecdotal than empirical, affecting a few hundred or thousand people at a time.'²¹ Likewise, Barnett, although mentioning the need for community resettlement as one of the extreme responses to climate change, still argues that 'despite some speculations in media and environmental community, such relocations are unlikely to be necessary in the coming decades.'²² In line with that, McAdam suggests that when talking about the issue of inundation in Tuvalu and Kiribati, 'the movement away from the island States (...) is likely to be slow and gradual,'²³ and that 'small island States such as Kiribati and Tuvalu will become uninhabited long before they physically disappear.'²⁴ These considerations are well founded and demonstrate that planned relocation is not necessarily the only possible scenario for disappearing territories. However, this article has a different point of departure and different logical reasoning. First of all, there is agreement among scientists that the sea level will continue to rise.²⁵ Secondly, planned relocation is officially acknowledged as an adaptation strategy under the UNFCCC framework. And thirdly, there are nations which actually claim that for their populations planned relocation might be the only way to in fact survive climate change. Namely, at the 60th session of the UN General Assembly in 2005, Kiribati's President, Anote Tong, mentioned the need for nations to seriously consider the option of relocation. He acknowledged that it might be too late for the application of other forms of adaptation in the case of his nation and that now was the time to be discussing what might be needed in the coming decades.²⁶ These facts allow the claim to be made that there is no excuse to remain silent on resettlement. On the contrary, there is a need to consider and fully acknowledge this strategy and to move on to the debates on how to carry out planned relocation in the most efficient way.

Another obstacle in the debates on planned relocation lies in the fact that the record of previously carried out resettlements, in anticipation or forced by development projects or physical disasters, have not been very successful, particularly when focusing on the human rights of resettled people.²⁷ Past experiences with resettlement indeed show that removed populations end up worse off, largely due to

19 Cancun Adaptation Framework, *supra* note 17, Para. 14 (f).

20 Among the exceptions are E. Ferris, *Protection and Planned Relocations in the Context of Climate Change*, 2012 (UNHCR, PPLA/2012/04); A. de Sherbinin et al., 'Preparing for Resettlement Associated with Climate Change', 2011 *Science* 334, pp. 456-457; G. Hugo, *Lessons from Past Forced Resettlements for Climate Change Migration* (Panel contribution to the Population-Environment Research Network Cyberseminar: Preparing for Population Displacement and Resettlement Associated with Climate Change and Large Climate Mitigation and Adaptation Projects, November 2011), available at <http://www.populationenvironmentresearch.org/papers/Hugo_PERNcyberseminar_2011.pdf> (last visited 9 December 2013).

21 Brown, *supra* note 6, p. 26.

22 J. Barnett & M.I. Webber, *Accommodating Migration to Promote Adaptation to Climate Change* (Policy brief prepared for the Secretariat of the Swedish Commission on Climate Change and Development and the World Bank Report 2010 team), 2009, p. 27.

23 J. McAdam, "Disappearing States", Statelessness and the Boundaries of International Law', in J. McAdam (ed.), *Climate Change and Displacement: Multidisciplinary Perspective*, 2010, p. 109.

24 *Ibid.*, p. 106.

25 Panel on Advancing the Science of Climate Change, Board on Atmospheric Sciences and Climate, Division on Earth and Life Studies, 'Sea Level Rise and the Coastal Environment', in National Research Council of the National Academies, *Advancing the Science of Climate Change*, 2010, p. 245.

26 M. Loughry & J. McAdam, 'Kiribati – Relocation and Adaptation', 2008 *Forced Migration Review* 31, pp. 51-52.

27 Ferris, *supra* note 20, p. 9.

a decline in their standards of living and multiple losses. Among the most fundamental and common risks, Cernea identifies landlessness, unemployment, joblessness, homelessness, marginalization, food insecurity, increased morbidity and mortality, the loss of access to common property and social disintegration.²⁸ Considering these potential risks, it becomes clearer why the international community and national governments do not want to engage in such potentially failed projects.

However, the fear that planned relocation will result in maladaptation and numerous impoverishments seems to be an immature reason for ignoring this strategy. No doubt, forced resettlement has little potential to contribute positively to the well-being of those who are forced to engage in it and can easily lead to massive impoverishments. Moreover, it certainly will do so if these problems are left unaddressed and ignored. Sporadic, last-minute, unsupervised movements are clearly associated with significantly more serious risks for human rights and international security.²⁹ Past experiences, on the contrary, could be considered as lessons. While there might not be many examples of climate-induced resettlement, the scale of development-induced resettlement is massive.³⁰ These cases present valuable examples of the issues which constantly recur during resettlement and the most common problems that people and governments face. Therefore, instead of rejecting the potential of resettlement as an adaptation strategy because of the mistakes and errors of the past, it seems better to learn from them and to avoid them in the future.

Ultimately, it can be claimed that in spite of the Cancun Agreement, which emphasizes the importance of promoting ‘measures to enhance understanding, coordination and cooperation with regard to climate change-induced displacement, migration and planned relocation,’ and despite the urgency of the situation for certain regions, and also despite the fact that certain nations themselves acknowledge the need to be resettled, the issue of planned relocation has not received sufficient attention and has been largely neglected and ignored in legal and political debates. Indeed the idea of community resettlement, as Hugo notices, presents the most controversial dimension in the current discourse on climate change.³¹ The risks for the human rights of relocated people and of the host communities are great, which is clearly demonstrated by past experiences with resettlement for other reasons. However, with the use of these – even negative – examples and with the further analysis of the specific aspects of relocation in light of climate change, it seems possible to map the main problems that have to be addressed and the rights that must be ensured during the relocation when the time comes. It is important to clarify that this article does not claim that relocation in anticipation or forced by development projects or physical disasters is absolutely compatible with the planned relocation due to climate change. There could be major differences between the ways these processes take place, for instance between the timeframe for relocation, the distance for which people have to be relocated, etc. The extent to which human rights could be violated can therefore also be different. However, since in both cases we are talking about the resettlement of people to the new territory, there is enough reason to argue that the rights at risk and the problems that appear are similar, and that past experiences can inform development and understanding of the planned relocation as an adaptation strategy.

Therefore, this article proceeds further with the analysis of the human rights at risk. It will show why it is important to address these implications during the planned relocation and what approach appears to be the most suitable for this purpose.

28 M.M. Cernea, ‘Impoverishment Risks, Risk Management, and Reconstruction: A Model of Population Displacement and Resettlement’, paper presented to the UN Symposium on Hydropower and Sustainable Development, Beijing, October 2000.

29 See note 7 and note 8, *supra*.

30 It is estimated that there are approximately 280-300 million people who have been displaced by development projects in the last 20 years and that 15 million people are displaced annually; see Ferris, *supra* note 20, p. 14.

31 Hugo, *supra* note 20, p. 1.

3. Human rights implications of planned relocation as an adaptation strategy. The opportunities of a human rights-based approach

3.1. Human rights at risk

Although planned relocation, in the context of climate change, is often criticized for its limitations and negative impact on humans, the fact remains that there has been no extensive study carried out on the human rights which are at risk.³² Most of the scepticism draws its inspiration from the data and research on human rights implications during the resettlement due to development projects, while the nature of the relations between climate-induced relocation and human rights is not so well understood. This can perhaps be explained by the fact that even the nature of the connection between human rights and climate change has not been fully explored. It was only in 2008 that the UN Human Rights Council adopted Resolution 7/23, which was the first UN Resolution to recognize that climate change poses an immediate threat to people and communities around the world and has significant implications for the enjoyment of human rights.³³ Later in the same year, the UN International Council on Human Rights Policies published the *Rough Guide on Human Rights and Climate Change*, which brought attention to the human rights dimension of mitigation and adaptation policies and warned that even when the relevant law refers explicitly to human rights, there is still a danger that mitigation and adaptation policies may themselves undermine human rights.³⁴ March 2009 marked the embodiment of the previous work of the Office of the United Nations High Commissioner for Human Rights (OHCHR) and the International Council on Human Rights Policy (ICHRP) on the relationship between human rights and climate change in international law by the adoption of Resolution 10/4.³⁵ This resolution noted that 'climate change related effects have a range of implications, both direct and indirect, for the effective enjoyment of human rights'.³⁶

Nevertheless, current climate change adaptation discourse on migration, displacement and planned relocation remains largely silent concerning rights.³⁷ This creates a deadlock situation. Planned relocation is needed but is largely undeveloped due to its enormous human-rights costs, and at the same time, there is no initiative to understand the rights which are at risk and to find a way to safeguard them. This article, therefore, undertakes an attempt to fill this gap and to identify the rights which are particularly threatened by the planned relocation. As has been stated above, this article focuses only on international legal instruments and does not consider domestic ones. Accordingly, the analysed human rights at risk will be tied to the international human rights conventions and documents. In order to build up a respective list of the most likely violated human rights, the specific nature of relocation, due to climatic reasons, will be taken into account. Additionally, past experiences with resettlement due to other reasons will be often recalled.

Generally speaking, it is hard to name a right that is not at risk during the resettlement. The list of human rights is non-exhaustive and in fact it is difficult to draw lines between them. The nature of human rights is such that all of them are interdependent, interrelated and indivisible, whether they are civil and political rights, such as the right to life, equality before the law and freedom of expression; or economic, social and cultural rights, such as the rights to work, social security and education; or collective rights, such as the rights to development and self-determination. The improvement of one right facilitates the advancement of another. Likewise, the deprivation of one right also adversely affects another.³⁸ Furthermore, while there are some rights that are most obviously at risk when it comes to a

32 Among the exceptions are: M.M. Naser & T. Afroz, 'Human Rights Implications of Climate Change Induced Displacement', 2009 *Bond Law Review* 21, no. 3, pp. 139-153; S. Leckie, 'Human Rights Implications', 2008 *Forced Migration Review* 31. Yet, authors mainly address the implications of climate change for human rights and not the implications of relocation for human rights.

33 UN Office of the High Commissioner for Human Rights, Human Rights Council Resolution 7/23: Human Rights and Climate Change (Maldives Submission under Resolution HRC 7/2, 2008).

34 S. Humphrey, *Climate Change and Human Rights: A Rough Guide*, 2008, p. 20.

35 UN Office of the High Commissioner for Human Rights, Human Rights and Climate Change, Resolution 10/4, 41st meeting, 25, March 2009,

36 Ibid.

37 Humphrey, *supra* note 34, pp. 20-21.

38 OHCHR, 'Your Human Rights' (OHCHR official website), available at <<http://www.ohchr.org/en/issues/Pages/WhatareHumanRights.aspx>> (last visited 9 December 2013).

person's relocation, others are harder to grasp and to allocate. Yet, this research aims to identify the wider range of the rights at risk and to emphasize those that seem particularly relevant and vulnerable.

The right to life

The right to life is 'basic to all human rights,' which does not allow for any derogation, even in times of public emergency.³⁹ This right is protected in several international treaties and covenants, such as the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR)⁴⁰ and the Convention on the Rights of the Child (CRC).⁴¹ Even though it appears that planned relocation does not directly threaten the right to life, especially since one of the main intentions for such resettlement is to save people's lives, the UN Human Rights Committee has warned against a narrow interpretation of the right to life and has emphasized that it should be understood in a broad context. This means that this right not only entails that humans cannot be arbitrarily deprived of their lives, but is also about the positive measures that the State Parties should take, for instance the efforts to reduce malnutrition, epidemics and infant mortality.⁴² Therefore, the protection of the right to life is closely related to measures for the fulfilment of other rights, such as those related to food, water, health and housing. Consequently, should the planned relocation fail to consider later threats, the right to life will be compromised.

The right to adequate food

The right to food is explicitly mentioned under the International Covenant on Economic, Social and Cultural Rights (ICESCR).⁴³ It is also incorporated into the CRC,⁴⁴ the Convention on the Rights of Persons with Disabilities (CRPD),⁴⁵ and implies, in general, provisions on an adequate standard of living in the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).⁴⁶ The right was defined by the UN Special Rapporteur on the Right to Food as:

'a human right, inherent in all people, to have regular, permanent and unrestricted access, either directly or by means of financial purchases, to quantitatively and qualitatively adequate and sufficient food corresponding to the cultural traditions of people to which the consumer belongs, and which ensures a physical and mental, individual and collective fulfilling and dignified life free of fear.'⁴⁷

It is not difficult to imagine all sorts of situations in which the right to adequate food could be infringed during resettlement, starting with the issue of hunger, due to the increasing demand for food in the receiving areas, to the radical change in diet, which can contradict the traditions and culture of resettled people. Cernea shows with regard to past resettlement experiences that food insecurity and undernourishment are the symptoms and results of inadequate resettlement. Furthermore, nutrition-related risks reinforce morbidity and mortality risks.⁴⁸

39 UN Human Rights Committee, General Comment No. 6 (1982) on the Right to Life (Article 6), Para. 1; General Comment No. 14 (1984) on the Right to Life (Article 6), Para. 1.

40 International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976), 999 UNTS 171 (ICCPR).

41 Art. 6(1) ICCPR; Universal Declaration of Human Rights (adopted 10 December 1948), UNGA Res 217 A(III) (UDHR), Art. 3; United Nations Convention on the Rights of the Child, (adopted 20 November 1989, entered into force 2 September 1990), 1577 UNTS (CRC), Art. 6.

42 UN Human Rights Committee, General Comment No. 6 (1982) on the Right to Life (Article 6).

43 International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976), 993 UNTS (ICESCR), Art. 11(1), 11(2).

44 Art. 24(2)(c) CRC.

45 Convention on the Rights of Persons with Disabilities (adopted 24 January 2007 UNGA Res A/RES/61/106, entered into force 3 May 2008) (CRPD), Art. 28(1).

46 Convention on the Elimination of All Forms of Discrimination Against Women (adopted 18 December 1979, entered into force 3 September 1981), 1249 UNTS (CEDAW), preamble.

47 J. Ziegler, *The Right to Food*, Report by the Special Rapporteur on the Right to Food, 2001, UN Doc E/CN.4/2001/53, 2.

48 Cernea, *supra* note 28.

The right to water

The human right to water, just as the right to food, is similarly at risk. For a long time, the legal status of the right to water remained unclear and it was highly debated whether this right could be recognized as a separate individual human right.⁴⁹ However, in 2010 the UN General Assembly and the UN Human Rights Council explicitly acknowledged the existence of the right to water and sanitation as a basic human right.⁵⁰ Although not explicitly mentioned in the ICESCR, this right is implied in the Covenant's Article 11 (the right to an adequate standard of living)⁵¹ and Article 12 (the right to the highest attainable standard of health).⁵² The Committee on Economic, Social and Cultural Rights (CESCR) has defined the right to water as the right of everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic use, such as drinking, food preparation and personal and household hygiene.⁵³ The right to water is also emphasized in Article 14(2)(h) of the CEDAW and in Article 24 of the CRC.

Climate change-related effects may have a negative impact on water availability, and may aggravate the problem of unsafe drinking water. The increased demand for water in regions where populations threatened by climate change will be resettled worsens the situation. In addition, an unsafe water supply and ill-conceived sewage systems increase vulnerability to diseases and epidemics. The empirical research on development-forced resettlement shows that due to parasitic and vector-borne diseases caused by unsafe and insufficient water supplies and unsanitary waste systems, resettlement may lead to a great increase in morbidity among both displaced and local people.⁵⁴

The right to health

Taking into account the threat that resettlement presents to the human rights to food and to water, it is not hard to understand why the human right to health is also under threat.

The right to the highest attainable standard of physical and mental health (the right to health) is most comprehensively addressed in Article 12 of the ICESCR and is referred to in several other core international human rights treaties.⁵⁵ This right implies the enjoyment of, and equal access to, appropriate health care and, more broadly, to goods, services and conditions which enable a person to live a healthy life. Underlying determinants of health, as the CESCR states, include adequate food and nutrition, housing, safe drinking water, adequate sanitation, and a healthy environment.⁵⁶

The previous experiences with relocation show that displaced people experience higher levels of exposure and vulnerability to illnesses and severe diseases than they did prior to displacement.⁵⁷ Besides the risks of malnutrition or a radical change in diet, the lack of safe water and inadequate sanitary conditions, empirical research also shows that forced relocation exposes people to 'social stress' which has various negative consequences on mental health across different groups of relocated people.⁵⁸

49 J. Verschuuren, 'Climate Change Adaptation and Water Law', in: J. Verschuuren (ed.), *Research Handbook on Climate Change Adaptation Law*, 2013.

50 UN General Assembly Resolution 64/292 of 7 August 2010, UN A/RES/64/292, and Human Rights Council Decision of 24 September 2010, UN A/HRC/15/L.14.

51 UN Committee on Economic, Social and Cultural Rights, General Comment No. 15, UN Doc. E/C.12/2002/11 (2002) on the Right to Water (Article 11), Para. 1 of the Covenant specifies a number of rights emanating from, and indispensable for the realization of the right to an adequate standard of living including adequate food, clothing and housing. The use of the word 'including' indicates that this catalogue of rights was not intended to be exhaustive. The right to water clearly falls within the category of guarantees essential for securing an adequate standard of living, particularly since it is one of the most fundamental conditions for survival.

52 General Comment No. 15 (2002) on the Right to Water, Art. 12(1).

53 Ibid, Arts. 11, 12.

54 Cernea, *supra* note 28.

55 Art. 25(1) UDHR; Art. 24 CRC, Art. 12 CEDAW.

56 UN Committee on Economic, Social and Cultural Rights, General Comment No. 14, UN Doc. E/C.12/2000/4 (2000) On the Right to the Highest Attainable Standard of Health, Art. 12.

57 Cernea, *supra* note 28.

58 Cernea, *supra* note 28.

The right to adequate housing

The right to adequate housing is codified in several core international human rights instruments and most comprehensively under the ICESCR as an element of the right to an adequate standard of living.⁵⁹ The right to adequate housing has been defined as ‘the right to live somewhere in security, peace and dignity’.⁶⁰ Core elements of this right include security of tenure, protection against forced evictions, availability of services, materials, facilities and infrastructure, affordability, habitability, accessibility, location and cultural adequacy.⁶¹

Resettlement obviously compromises this right by forcing a person to leave the place where he or she used to inhabit. The record of previous experiences confirms that many people, who were removed by development projects, ended up homeless or had their living conditions worsen dramatically.⁶² The example of the Fouta-Djallon irrigation project, implemented during the late 1970s and early 1980s in Mauritania, shows that only 200 out of 881 displaced families were able to reconstruct their houses successfully; the rest lived there for two years or longer in tents or under tarpaulins.⁶³

In the context of climate-induced resettlement, it is projected that many people will have to resettle from rural to urban zones.⁶⁴ This would mean a great demand for already scarce urban space. Unless managed properly, people would end up in informal settlements that are built illegally and that have been subject to improper planning, where they would face a wide range of diseases, insufficient water and food and the risk of social conflicts.⁶⁵

However, the right to adequate housing is compromised not only by material losses. Cultural adequacy is an element of this right, according to the comments of the CESCR. This element suggests that ‘the way housing is constructed (...) must appropriately enable the expression of cultural identity and diversity of housing’ and that the ‘activities geared towards development or modernization in the housing sphere should ensure that the cultural dimensions of housing are not sacrificed’.⁶⁶

For decades, studies have taken place within several disciplines of the social sciences, including psychological concepts of place attachment, place identity, home and the perception of these concepts by people induced towards relocation. The findings show that places are undoubtedly given certain meaning by those people who have developed an attachment to them. Eventually, the place is incorporated into a person’s self-definition, and becomes something that identifies the person. This is known as place identity.⁶⁷ Even though the understanding of land and place varies in different regions of the world, and perhaps even within one region, there are still some commonalities with regard to cultural links to land, especially in the developing countries. In many areas there is a common understanding that the land cannot be separated from those who belong to it.⁶⁸

Cernea, analysing past experiences with resettlement, also comes to the conclusion that the loss of housing has a broader cultural dimension. According to the respective research, the loss of a family’s individual home and the loss of the group’s cultural space results in alienation and status deprivation and leads to a lasting sense of placelessness among relocated people.⁶⁹

59 Art. 11 ICESCR, see also Art. 25, Para. 1 UDHR; International Convention on the Elimination of All Forms of Racial Discrimination (adopted 21 December 1965, entered into force 4 January 1969), 660 UNTS (ICERD), Art. 5(e)(iii); Art. 14, Para. 2 CEDAW; Art. 3, Para 2 CRC; International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (adopted 18 December 1990 UNGA Res A/RES/45/158, entered into force 1 July 2003) (ICRMW); Art. 43, Para. 1(d); Art. 9, Para. 1(a), Art. 28, Paras 1, 2(d) CRPD.

60 UN Human Rights Committee, General Comment No. 7 (1997) On the Right to Adequate Housing: Forced Evictions, Art. 11(1).

61 UN Committee on Economic, Social and Cultural Rights, General Comment No. 4, UN Doc. E/1992/23 (1991) on the Right to Adequate Housing, Art. 11(1), Para. 8.

62 Cernea, *supra* note 28.

63 *Ibid.*

64 IPCC, Fourth Assessment Report: Climate Change 2007, Working Group II: Impacts, Adaption and Vulnerability, p. 282.

65 M.J. Hall & D.C. Weiss, ‘Avoiding Adaptation Apartheid: Climate Change Adaptation and Human Rights Law’, 2012 *Yale Journal of International Law* 37, no. 2, p. 333.

66 General Comment No. 4, *supra* note 61, Art. 11(1), Para. 8.

67 L. Scannell & G. Robert, ‘Personally Relevant Climate Change: The Role of Place Attachment and Local Versus Global Message Framing in Engagement’, 2013 *Environment and Behavior* 45, no. 1, p. 7.

68 J. Campbell, ‘Climate-Induced Community Relocation in the Pacific: The Meaning and Importance of Land’, in J. McAdam (ed.), *Climate Change and Displacement: Multidisciplinary Perspective*, 2010, p. 60.

69 Cernea, *supra* note 28.

Therefore, planned relocation as an adaptation strategy presents a threat for the fulfilment of the right to adequate housing of resettled people and leads to numerous material, social and cultural losses. The restoration of the right to adequate housing should take into account the need to compensate, also for these types of losses, and to restore the livelihood of uprooted people.

The right not to be forcibly evicted

The right to be protected from forced eviction forms an inevitable part of the right to adequate housing and is widely recognized under international human rights law. This right has been expressed in various formulations in numerous human rights instruments, most notably in Article 25 of the UDHR and Article 11 of the ICESCR.

Forced evictions are defined as the ‘permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection.’⁷⁰

As the United Nations Special Rapporteur, Theo van Boven, has emphasized ‘the issue of forced removals (...) is considered a practice that does grave and disastrous harm to the basic civil, political, economic, social and cultural rights of large numbers of people, both individual persons and collectivities.’⁷¹ The human costs of forced evictions are indeed substantial and can involve a wide range of additional negative impacts on the lives and livelihood of affected people, such as multiple individual and social impoverishments, including homelessness and the growth of new slums, physical, psychological and emotional trauma.⁷² Another negative impact of forced eviction is the infringement of the right to education as children are unable to attend school. The right to work is breached as people lose their source of employment. When families and communities are torn apart by eviction, the right to family life is infringed. Emerging human rights such as the right to remain in one’s home or land and the right to return to one’s home can equally be lost in the event of a forced eviction.⁷³

The right not to be forcibly evicted has a direct relation to planned relocation as an adaptation strategy, as it purports to remove people from their land. Sustainment of this right presents a huge obstacle to planned relocation, due to the general reluctance to relocate in communities threatened by inundation. An example of how the human attitude towards the issue of climate change can suppress relocation as an adaptation strategy is the one of Tuvalu. Research shows that the people of Tuvalu – in spite of frequent workshops and statements by officials about climate change and the danger of a sea-level rise – are still not convinced of the urgency of the problem and are extremely reluctant to leave. Most people believe that the issue is not one to be concerned with and even refuse to talk about it.⁷⁴ The explanation for this lies in the fact that religion plays a significant, if not the central part in dictating the islanders’ lives and in shaping their beliefs. The results of interviews conducted with the islanders some years ago have shown that around half of the interviewees referred to the promise which God made to Noah in the Bible as an explanation for and evidence that there would be no further flooding.⁷⁵ This belief is so strong that some officials have mentioned it as the main barrier to raising awareness of climate change and it will certainly be an obstacle should the need to resettle these people arise.⁷⁶

Therefore, information and certainly education have to be provided to people from areas at risk of inundation. There is a need to raise awareness among people about the upcoming threats and to assure them that the process of resettlement will be managed in a fair way, with sufficient compensation being provided, so that people will actually be willing to resettle. Otherwise, the right not to be forcibly evicted is likely to be infringed.

70 General Comment No. 7 (1997) On the Right to Adequate Housing: Forced Evictions, Art. 11(1), Para. 3.

71 Commission on Human Rights, *Study Concerning the Right to Restitution, Compensation and Rehabilitation for Victims of Gross Violations of Human Rights and Fundamental Freedoms* (Commission, E/CN.4/Sub.2/1993/8), Para. 21.

72 UN Office of the High Commissioner for Human Rights, *Fact Sheet No. 25, Forced Evictions and Human Rights*, May 1996.

73 Ibid.

74 S.S. Patel, Science Journalist, New York City, Interview with Carol Farbotko, Cultural Geographer, University of Tasmania (2006 *Nature* 440, pp. 734-736).

75 Bible, Genesis 9:1; C. Mortreux & J. Barnett, ‘Climate change, migration and adaptation in Funafuti, Tuvalu’, 2009 *Global Environmental Change* 19, no. 1, p. 109.

76 Mortreux & Barnett, *supra* note 75, p. 110.

The right to work and the right to education

The right to work is most comprehensively addressed in Articles 6, 7, and 8 of the ICESCR.⁷⁷ The right to work is of importance, not only as a source of income for an individual and his or her family, but also as a matter of an individual's dignity and for the development of society. Through Article 6, State Parties recognize 'the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts' and commit themselves to take appropriate steps to safeguard and achieve the full realization of this right.

Resettlement clearly compromises the right to work. First of all, creating jobs for resettled people is not an easy task and can therefore lead to the impossibility of finding a job. Secondly, any jobs that are available in a new place might not be in line with the qualifications of migrants, such as in the case of a rural-urban resettlement, where people have been used to working in fisheries or in agriculture for their entire lives. After relocation, these people will lose access to land and water: maybe because it is owned by others, or due to the industrial nature of a new region. A related issue that can limit the full enjoyment of the right to work is the language. For instance, in the cases of disappearing islands, internal relocation would not be an option. Here, people would likely end up on territories using a foreign language. Furthermore, empirical research on previous resettlements show – even in cases when it is possible to find a new job – that significant reductions in levels of earnings are inevitable.⁷⁸

Similarly, relocation can easily lead to the situation where the right to education is sacrificed. The right to education has a solid basis in several universal documents⁷⁹ and is both a human right in itself and an indispensable means of realizing other human rights. As the CESCR states, education is the primary vehicle by which economically and socially marginalized adults and children can lift themselves out of poverty and obtain the means to participate fully in their communities. Furthermore, it has a vital role in empowering women and safeguarding children from exploitative and hazardous labour and sexual exploitation.⁸⁰

Due to the same obstacles present as for the right to work, namely, the availability of educational institutions at a new place, or accessibility to these institutions and language constraints, the right to education can be limited or impossible to fulfil for the relocated individuals.

The right to take part in cultural life

Another human right that is at risk when it comes to planned relocation is the right to take part in cultural life.⁸¹ This right implies that every human being has the right to culture, including the right to enjoy and develop cultural life and identity.⁸² As stated above, the loss of homelands and natural and cultural surroundings can seriously threaten the cultural rights of relocated people. During their life, people acquire certain linguistic, religious, artistic and cultural characteristics. These characteristics are usually influenced, to a great extent, by the natural environment, especially in developing countries,⁸³ where the environment has a great symbolic, emotional, spiritual and widely perceived intrinsic value.⁸⁴ As Adger argues, the loss of physical places when people are resettled involves the loss of attendant cultural and social significance and has a disruptive impact on cultural identity.⁸⁵

Therefore, the cultural rights of resettled communities are also at risk and have to be taken into account. This is particularly important due to the fact that they can be easily overlooked, as they are not necessarily constructed, but they rather emerge from within a certain society.⁸⁶ Secondly, it could be hard to assess, to identify and especially to sufficiently compensate them.

77 Arts. 6, 7, 8 ICESCR.

78 Cernea, *supra* note 28.

79 Art. 26 UDHR; UNESCO Convention against Discrimination in Education; Arts. 13, 14 ICESCR; Art. 10 CEDAW; Arts. 28, 29 CRC.

80 General Comment No. 13 (1999) On the Right to Education (Article 13), Para. 1.

81 Art. 15(1)(a) ICESCR.

82 D. Ayton-Shenker, *The Challenge of Human Rights and Cultural Diversity*, United Nations Background Note, DPI/1627/HR, 1995, <<http://www.un.org/rights/dpi1627e.htm>> (last visited 9 December 2013).

83 Campbell, *supra* note 68, p. 60.

84 W.N. Adger et al., 'This must be the place: Underrepresentation of Identity and Meaning in Climate Change Decision-Making', 2011 *Global Environmental Politics* 11, no. 2, p. 2.

85 W.N. Adger, 'Are there social limits to adaptation to climate change?', 2009 *Climatic Change* 93, p. 348.

86 *Ibid.*, pp. 337-338.

The right to self-determination

The scope and severity of climate change is such that the damage goes far beyond individual rights. Besides the wide range of individual rights that are threatened through planned relocation, a number of collective rights are also at risk.

People's right to self-determination is enshrined in both the ICESCR and the ICCPR. According to the definition, 'all peoples have the right of self-determination', by virtue of which 'they freely determine their political status and freely pursue their economic, social and cultural development'.⁸⁷ This means that the right to self-determination is not only valuable in itself, but it is also a prerequisite for the realization of all other human rights. Furthermore, a successful realization of the right to self-determination as a collective right requires the participation of the larger group.⁸⁸ This task presents a huge technical, physical, and financial difficulty, as it would mean that resettlement should guarantee that people remain within their community, and thus that the whole community has to be relocated to one new place.

An infringement of the fundamental right to self-determination also arises in extreme cases, for instance, where the effects of climate change no longer allow the territory of the state to be suitable for living, or, more extremely, when it submerges and disappears. The loss of the whole state territory jeopardises its recognition as a state under international law and raises a question as to the legal status of the people that have undergone relocation. Without territory and, potentially, statehood, both the individual and collective rights of a people are no longer adequately protected by their state, and are thus increasingly vulnerable to potential violations.⁸⁹ Further, the right to have a nationality and not to become stateless is also affected if the state, from which that nationality flows, disappears.⁹⁰

The right to development

The right to development, as another collective right threatened by climate change and planned resettlement, is not so firmly entrenched in customary international law as the right to self-determination. Yet, some authors claim that climate change impacts and strategies implemented to adapt to these changes can prevent people from pursuing their right to development.⁹¹

The right to development is a relatively new concept in human rights law. In general, the right to development integrates human rights and economic development, and addresses the economic imbalances between the developed and the developing world. The right to development integrates civil and political rights with economic, social and cultural rights and calls for such a level of development 'in which all human rights and fundamental freedoms can be fully realized'.⁹² The past experiences with resettlement and the observation of risks associated with this adaptation response provide a firm reason to believe that this right is at risk. Firstly, since regions severely affected by climate change, and ultimately requiring planned relocation, are mainly among developing and the least developed states, people's right to development is already compromised. Secondly, damage to property, place, opportunities, lifestyles and the traditions of people induced into resettlement – which have proved to arise in the past, with the potential to appear in the future – also put the right to development under threat.

Before moving on to making suggestions as to how the use of a human rights-based approach can help to secure the above-stated rights during relocation, it is important to re-emphasize that the provided list of rights is not a complete one. By their very nature, human rights are indivisible, meaning that the violation of one tends to provoke a chain reaction and impacts a whole range of other rights. Yet, this list is far-reaching and allows one to draw the attention of policy-makers to the most controversial points.

87 Art. 1 ICESCR; Art. 1 ICCPR.

88 UN Office of the High Commissioner for Human Rights, Human Rights Council Resolution 7/23: Human Rights and Climate Change (Maldives Submission under Resolution HRC 7/2, 2008), p. 39.

89 S. Willcox, 'A Rising Tide: The Implications of Climate Change Inundation for Human Rights and State Sovereignty', 2012 *Essex Human Rights Review* 9, no. 1, p. 7.

90 Submission on the Relationship Between Climate Change and Human Rights, Pursuant to UN Human Rights Council Resolution 7/23 from Ben Saul, Jane McAdam et al., University of Sydney to Mr Ulrik Halsteen, OHCHR (19 September 2008).

91 J. Barnett, 'Titanic States? Impacts and Responses to Climate Change in the Pacific Islands', 2005 *Journal of International Affairs* 59, no. 1, pp. 203-219.

92 Declaration on the Right to Development (adopted 4 December 1986 UNGA Res. 41/128), preamble.

3.2. Human rights-based approach: contribution to the adaptation framework

Considering the number of rights that can be affected during and after planned relocation, it is not surprising that this strategy is often labelled as being maladaptive and generally neglected in the debates on adaptation. At the same time, the fact that for some populations there will soon be no other option, rather than to relocate, is also an accepted fact. Therefore, there is a need to find an approach which will allow negative implications associated with relocation to be avoided, to strengthen planned relocation as an adaptation strategy by, among other things, ensuring that the wide range of human rights at risk are taken into account during its preparation and implementation.

Since climate change has acquired a human face (meaning its vast human rights implications), there is an increasing understanding that this scientific phenomenon, including adaptation thereto, cannot be approached only as a technical issue. It requires a holistic strategy. This article advocates a human rights-based approach as an essential element of such a holistic strategy.⁹³

Approaching the issue from the human rights perspective brings a conceptual benefit, since as soon as the rights at risk are identified and understood, corresponding to these rights duties can be ensured.⁹⁴ Human rights law allows one to shift the focus to obligations, and to concentrate on the fact that states are obliged to protect the rights of the people within their territory, and that they can be held accountable if they do not do so. Therefore, approaching the issue of adaptation from the rights perspective is beneficial in contrast to the environmental law approach, where establishing responsibility requires calculations on the state's contribution to climate change, based on complicated scientific estimations.

The crucial clarification is in place: human rights law and a human rights-based approach which this paper advocates are not entirely equal in their substance. Two following sub-sections address this matter.

3.2.1. Acknowledging limitations of the current human rights framework

Nonetheless, human rights law in its application to the issue of climate-induced migration is an important tool, since it transfers the issue of the implicated rights into the dimension of corresponding to these rights obligations, and there are still many challenges in successfully fitting the climate change challenges under the human rights umbrella.⁹⁵

Under human rights law states have the primary legal obligation to guarantee and promote human rights domestically, i.e. for those within its territory.⁹⁶ It has already been mentioned, however, that the negative effects of climate change are diffused disproportionally, affecting mostly those who are least responsible for these changes, and are least able to cope with them. No matter how good the human rights policies of the states affected by climate change are, and how strong the human rights institutions are, should the question of resettlement become urgent, these states will simply not be able to manage and secure the human rights of their citizens.

If a state fails to guarantee human rights within its territory, then at least two relevant questions appear: what are the obligations of the state that failed to comply with its primary human rights obligations? And, are there any obligations on the side of third states?

With regard to the first question, there is a requirement to seek assistance and cooperation from 'all those who can assist'.⁹⁷ Should this be done by the developing state, there is a need to consider a

93 This article focuses on the added value of the human rights-based approach to planned relocation and does not provide detailed guidelines on how the planned relocation strategy shall be developed in practice. Planned relocation is a cumbersome technical process, requiring detailed planning, scientific and professional involvement, respective assessments etc. Protecting human rights is only one part of this process.

94 S. McInerney-Lankford, 'Human Rights and Climate Change: Reflections on International Legal Issues and Potential Policy Relevance', in M.B. Gerrard & G.E. Wannier (eds.), *Threatened Island Nations: Legal Implications of Rising Seas and a Changing Climate*, 2013, pp. 204-207; According to a tripartite typology there are three levels of obligations in human rights law – protect, respect and fulfil. These obligations 'apply to all human rights and therefore can give rise affirmative duties to take action or to duties to restrain'. This makes human rights law a sensitive framework for dealing with climate change impacts.

95 See: S. Humphreys, 'Climate Change and International Human Rights Law', in R. Rayfuse & S.V. Scott (eds.), *International Law in the Era of Climate Change*, 2012; S. McInerney-Lankford et al., *Human Rights and Climate Change: A Review of the International Legal Dimensions*, World Bank Study, 2011.

96 Willcox, *supra* note 89, p. 11.

97 M. Ssenyonjo, 'Economic, Social and Cultural Rights', in M.A. Baderin & M. Ssenyonjo (eds.), *International Human Rights Law: Six Decades After the UDHR and Beyond*, 2010, p. 68; M. Sepúlveda, 'Obligations of "International Assistance and Cooperation" in an Optional Protocol to the International Covenant on Economic, Social and Cultural Rights', 2006 *Netherlands Quarterly of Human Rights* 24, no. 2, p. 271.

second question. However, when it comes to extraterritorial obligations, the reach of human rights law is arguable.

It has to be clarified that the matter of extraterritoriality presents one of the most fundamental and controversial issues within the human rights legal discourse. This debate is outside the scope of this article and deserves to be addressed in a separate analysis.⁹⁸ Yet, the most important considerations with regard to the question of the extraterritoriality and sequential limitations of human rights law have to be listed.

The OHCHR, in its report, provides that the following extraterritorial obligations of states can be derived from the human rights framework, namely states are required to: 1) Refrain from interfering with the enjoyment of human rights in other countries; 2) Take measures to prevent third parties over which they hold influence from interfering with the enjoyment of human rights in other countries; 3) Take steps, individually and through international assistance and co-operation towards progressive and full realization of the rights recognized in the present Covenant.⁹⁹ Since this article focuses on relocation as an adaptation strategy, and more specifically on the soon to be relocated people, whose human rights are potentially threatened, the focus of the further analysis is solely on the third listed obligation (to assist and to cooperate).

Apart from the extraterritorial obligations identified in the OHCHR report, there is also some debate surrounding Article 2(1) of the ICCPR, and claims that it has an extraterritorial reach.¹⁰⁰ This provision requires each Party of the Covenant 'to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant'.¹⁰¹ However, the more accepted vision is that the obligations under the ICCPR are limited to 'those within its territory'.¹⁰² There are nevertheless endeavours to claim otherwise. There is an argument concerning the interpretation of the 'effective control' requirement, which was introduced by the Human Rights Committee in the interpretation of the Article 2(1).¹⁰³ Namely, according to General Comment No. 31: 'a State Party must respect and ensure the rights laid down in the Covenant to anyone within the power of effective control of that State Party, even if not situated within the territory of the State Party'.¹⁰⁴ Knox, though acknowledging the difficulty in the application of the 'effective control' test in proving that extraterritorial harm was caused by climate change, claims that 'it might be possible with respect to particularly extreme impacts, such as the effect of climate change on small island states'. As he argues: '[I]f global warming displaces affected individuals from their own land, causing them to lose control over their own lives, it could subject them to the control of others, including (perhaps) the states contributing most to the warming'.¹⁰⁵ While this attempt to allow for a broader interpretation of the ICCPR is significant, the debate surrounding the extraterritoriality of ICCPR leans more toward the vision that the obligations under the ICCPR are limited to 'those within its territory'.¹⁰⁶

98 M. Gromilova, *Expanding the Legal Debates on State Responsibility and Climate Change: Who has to Host Displaced Populations?* (forthcoming).

99 Office of the High Commissioner for Human Rights, *Report on the Relationship between Climate Change and Human Rights* (OHCHR, A/HRC/10/61, 2009), in M. Limon, 'Human Rights Obligations and Accountability in the Face of Climate Change', 2010 *Ga.J. Int'l & Comp.L* 38, p. 557; ICESCR, Art. 2(1).

100 See initially the disagreement between Matthew Waxman, Principal Deputy Dir. of Policy Planning, U.S. Dep't of State, Opening Statement to the U.N. Human Rights Comm. (Jul. 17, 2006), available at <<http://2001-2009.state.gov/s/p/rem/69126.htm>> (last visited 12 December 2013); according to the statement: '[I]t is the long-standing view of the United States that the Covenant by its very terms does not apply outside of the territory of a State Party'; and the Centre for Civil and Political Rights (CCPR), General Comment No. 3, The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, 1 10, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (Mar. 29, 2004); J.H. Knox, 'Climate Change and Human Rights Law', 2009 *Virginia Journal of International Law* 50, no. 1, pp. 202-206.

101 ICCPR, Art. 2(1).

102 ICCPR, Art. 2(1); on the position towards the question of extraterritoriality see: A. Boyle, 'Human Rights or Environmental Rights? A Reassessment', 2007 *Fordham Envtl. L. Rev.* 18, p. 500; M. Dennis, 'Application of Human Rights Treaties Extra territorially During Times of Armed Conflict and Military Occupation', 2006 *Am. Soc'y Int'l L. Proc.* 100, pp. 86, 88; Willcox, *supra* note 89; F. Coomans & M.T. Kamminga, *Extraterritorial Application of Human Rights Treaties*, 2004, p. 47; J.H. Knox, 'Diagonal Environmental rights', in M. Gibney & S. Skogly (eds.), *Universal Human Rights and Extraterritorial Obligations*, 2010, p. 86; M. Langford et al. (eds.), *Global Justice, State Duties: The Extraterritorial Scope of Economic, Social, and Cultural Rights in International Law*, 2012.

103 Knox 2009, *supra* note 100, p. 204.

104 UN Human Rights Committee, General Comment 31, The Nature of the General Legal Obligation Imposed on State Parties to the Covenant, 2004.

105 Knox 2009, *supra* note 100, p. 204.

106 See note 102, *supra*.

In contrast to the ICCPR the ICESCR creates a clearer foundation for the extraterritorial obligations and their legal bases are widely acknowledged, although the extent of these obligations is questionable.¹⁰⁷ Article 2(1) of the ICESCR explicitly calls on each of its State Parties to ‘take steps, individually and through international assistance and co-operation, (...) to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant (...)’.¹⁰⁸ Yet, neither the form, nor the reach of these obligations are identified. With regard to the obligation to assist, as it follows from the text – assistance, which mainly means financial and technical assistance,¹⁰⁹ it depends on the availability of resources, but who decides what level of assistance is required from each state is not directly prescribed. When it comes to the duty to cooperate, it is likewise unclear which forms this cooperation can take and what is the forum for such cooperation.

Another problem with the application of the extraterritorial obligations deeply rooted in the evolution of human rights law is that in most cases these obligations only play a secondary role. The priority is often given to the state’s national obligations towards its own territory.¹¹⁰ The correct balance between international and national obligations is one of the fundamental disagreements between developing and developed countries.¹¹¹ Developing countries claim that for them it is virtually impossible to handle the situation and to fulfil their human rights obligations without support and assistance. As an example Limon quotes the position of the Philippines in the negotiations at the Human Rights Council in 2009: ‘What domestic remedy or relief can the governments of small island states offer their citizens against the onslaught of rising sea level?’¹¹² Developed countries largely reject these arguments. Canada claims, for instance, that: ‘it’s the ability and willingness of the States to effectively prepare, prevent and respond to natural hazards that ensures the protection of basic human rights.’¹¹³ Unfortunately, the strong objection of developed states to acknowledge any extraterritorial responsibilities in that regard and the nature of human rights law which is famous for its state-centric character results in being not advantageous for the developing states’ situation. Thus international assistance and cooperation are only considered as being important moral obligations rather than a legal obligation.¹¹⁴

The issue of causation presents another challenge in establishing any form of accountability under the human rights framework. Holding a state accountable for human rights violations caused by climate change means that we can establish the causal relationship between the action of the duty bearer (the state) and the result or impact for the right holder. This is especially doubtful in the case of slow-onset climate change, and its implications for the human rights of a population in another state.¹¹⁵ All states to some extent have contributed to climate change. To determine that the behaviour of a particular state has caused a concrete climate-related effect – which has resulted in a necessity to relocate and sequential human rights deprivation for a certain group of people – will more likely be impossible.¹¹⁶

A further weakness of human rights law in its application to the issue of climate change is its remedial character. The adverse effects of global warming are often projections about future impacts, whereas human rights violations are normally established after the harm has occurred.¹¹⁷ This means that human rights law does not comprise a pre-emptive approach, which has been shown to be crucial in cases of relocation.

Therefore, human rights law, at least at the current stage of interpretation, is ill-equipped to address such global challenges as climate-induced displacement.

107 Coomans & Kamminga, *supra* note 102, p. 47; Knox 2009, *supra* note 100, p. 207; Langford et al., *supra* note 102.

108 ICESCR, Art. 2(1).

109 *Ibid.*

110 Langford et al., *supra* note 102, pp. 57-65.

111 Limon, *supra* note 99, p. 562.

112 Jesus Enrique G. Garcia II, Second Sec’y Phil. Permanent Mission to the United Nations at Geneva, Statement During General Debate Under Agenda Item 2 at the Tenth Session of the Human Rights Council (March 6, 2009), in Limon, *supra* note 99, p. 562.

113 J.y Heaton, Second Sec’y, Can. Permanent Mission to the United Nations at Geneva, Statement During General Debate Under Agenda Item 3 at the Tenth Session of the Human Rights Council (March 16, 2009), in Limon, *supra* note 99, p. 563.

114 Limon, *supra* note 99, p. 566; Willcox, *supra* note 89, p. 11.

115 Willcox, *supra* note 89, p. 10.

116 For more on the issues associated with establishing causation see: M. Gromilova & N. Jägers, ‘Climate Change Induced Displacement and International Law’, in J. Verschuuren (ed.), *Research Handbook on Climate Change and Adaptation Law*, 2013, p. 100.

117 UN Doc.A/HRC/10/61, cited in Limon, *supra* note 99, p. 554.

3.2.2. Introducing the human rights-based approach

A human rights-based approach, however, is different in its substance from current human rights law as a framework for dealing with the issue of planned relocation as an adaptation strategy. Although based on human rights principles and standards, a human rights-based approach focuses not that much on the question of what rights and obligations exist, but rather on how these rights can be addressed and integrated.

A human rights-based approach was first described in relation to development programming in the United Nations Statement of Common Understanding on Human Rights-Based Approach adopted in 2003.¹¹⁸ As follows from this explanation the human rights-based approach implies that all programmes of development co-operation, policies and technical assistance should further the realisation of human rights as laid down in the Universal Declaration of Human Rights and other international human rights instruments; these principles and standards should guide all development cooperation and programming in all sectors and in all phases of the programming process; and ultimately, development cooperation contributes to the development of the capacities of 'duty-bearers' to meet their obligations and/or of 'rights holders' to claim their rights.¹¹⁹

Although a human rights-based approach in relation to climate change has not been precisely defined, it has often been mentioned in climate-change negotiations and discussions.¹²⁰ In a nutshell Von Doussa et al. summarized a human rights-based approach to climate change as follows: 'a human rights-based approach provides a conceptual framework for climate change policies; a framework which is normatively based on international human rights standards and which is practically directed to promoting and protecting human rights.'¹²¹

This means that though this approach is based on and is inspired by human rights standards and principles, its focus is more forward looking. In contrast to current human rights law, which seeks to find 'redress for what has happened',¹²² (finding a wrongdoer and holding him accountable), a human rights-based approach is a forward-looking way of 'encouraging the evolution of, and providing a qualitative contribution to, robust, effective, and sustainable policy responses at both the national and international level, across mitigation and adaptation.'¹²³

A human rights-based approach to climate change was introduced in 2007. Since then, numerous UN bodies and other international actors have started its active promotion. In 2007, Kyung-wha Kang, Deputy UN Commissioner for Human Rights, stated that 'any strategy to deal with climate change, whether in terms of adaptation or mitigation, must incorporate the consequences for humans, as individuals and communities, and the human rights framework in the most effective way to do so'.¹²⁴ A year later, the importance of a human rights-based approach was integrated by the UN International Council on Human Rights Policies in the Rough Guide on Human Rights and Climate Change: the first extensive study on the relationship between climate change and human rights.¹²⁵ Further, the Office of the UN High Commissioner for Human Rights (OHCHR) has called for increased state action on adaptation and has emphasized the importance of applying a human rights-based approach in guiding policies and measures of climate change mitigation and adaptation. According to the OHCHR, a human rights-based approach should be integrated in any climate change adaptation or mitigation policy.¹²⁶ In

118 UN Common Statement of Understanding on Human Rights-Based Approach to Development Cooperation and Programming, The Human Rights Based Approach to Development Cooperation Towards a Common Understanding Among UN Agencies, 2003, available at <<http://hrbportal.org/the-un-and-hrba>> (last visited 17 December 2013). Although these guidelines are focused on development programming, its provisions are relevant for adaptation programmes, since adaptation is also a part of development.

119 Ibid.

120 See further footnote 121-132, *infra*.

121 J. Von Doussa et al., 'Human Rights and Climate Change', Background Paper, Human Rights: Everyone, Everywhere, Everyday, Human Rights and Equal Opportunity Commission, 2008, p. 12, available at: <http://www.humanrights.gov.au/sites/default/files/content/pdf/about/media/papers/hrandclimate_change.pdf> (last visited 12 December 2013), cited in M.M. Naser & T. Afroz, 'Human Rights Implications of Climate Change Induced Displacement', 2009 *Bond Law Review* 21, no. 3, p. 141.

122 M. Limon, 'Human Rights and Climate Change: Constructing a Case for Political Action', 2009 *Harv. Envtl. L. Rev.* 33, p. 458.

123 Ibid., p. 458.

124 Kyung-wha Kang, Deputy High Commissioner for Human Rights, Office of the U.N. High Commissioner for Human Rights, at the Conference of the Parties to the UNFCCC and its Kyoto Protocol (14 December 2007).

125 Humphrey, *supra* note 34.

126 Office of the High Commissioner for Human Rights, *Report on the Relationship between Climate Change and Human Rights* (OHCHR, A/HRC/10/61, 2009).

more practical terms, as the OHCHR suggests, this approach ‘can inform assessments, and strengthen processes, ensuring access to essential information, effective participation, and the provision of access to justice (remedies).’¹²⁷

On the political arena, there is also an increasing understanding of the issues at hand. The shift can be observed in the debates on the relationship between the climate change legal regime and human rights law. To demonstrate, in March 2008, during the seventh session of the Council, a wide range of states refused to accept that there was any relationship between climate change and human rights, arguing instead that climate change policies were to be dealt with by the UNFCCC,¹²⁸ and human rights policy by the Human Rights Council.¹²⁹ One year later, however, in March 2009, 88 UN Member States actually supported Human Rights Council Resolution 10/4, which called for greater involvement by expert human rights bodies in the UNFCCC process.¹³⁰

Therefore, there is already a strong foundation in the emerging climate change regime, both in normative development and political perception, for the integration of human rights-focused research into adaptation policies. Additionally, there is a swiftly growing realization that such an approach is the most legitimate way to deal with climate change, since affected people become central figures in adaptation-related decision-making, and since, according to this approach, any strategy should be guided by the core human rights principles.¹³¹ Eventually, a human rights-based approach can strengthen the existing politico-scientific discourse on climate change adaptation. The next section offers some practical considerations on the added-value of a human rights-based approach.

3.3. Contributions of a human rights-based approach

Throughout this article, and particularly in Section 3.1, it was demonstrated how many human rights risks are associated with planned relocation. A human rights-based approach with its focus on individuals and its sensitivity towards their problems was advocated as a means to effectively address the risks associated with planned relocation. Due to the lack of experience, the remaining uncertainties, and political constraints, it is hard to prescribe a concrete recipe on how a human rights-based approach can be introduced into the technically cumbersome process of decision-making and implementation. Neither does it appear to be possible to predict the exact implications which a human rights-based approach will have on planned relocation. Nevertheless, a thorough understanding of the human rights at risk and deliberate attention to a human rights-based approach can equip policy-makers with a check-list, or at least a list of important and controversial questions, which should be carefully addressed when developing and implementing planned relocation as an adaptation strategy.

During the preparatory stage, a human rights-based approach can remind policy makers and planners of important questions to be considered before becoming involved in the planning process:

1) Is the planned relocation an option of last resort?

Planners and decision-makers, considering the high human costs of planned relocation, have to weigh all the pros and cons and to ensure with the highest level of certainty that all other possible mitigation and adaptation measures take place or are considered, regardless of their costs. In the past there have been precedents where the economic advantages were prioritized in the decision-making. One example is the statement by the Australian Bureau of Agriculture and Resource Economics, made in 1996, declaring that the relocation of the population of small island states is preferable due to the financial ‘costs and benefits’ of this solution in comparison to the costs of mitigation.¹³² When approached from a human rights-based approach such a statement is inappropriate.

127 Office of the High Commissioner for Human Rights, *Applying a Human Rights-Based Approach to Climate Change Negotiations, Policies and Measures* (Resolution 10/4, 25 March 2009, available at: <<http://www.ohchr.org/Documents/Issues/ClimateChange/InfoNoteHRBA.pdf>> (last visited 12 December 2013)).

128 The UNFCCC has a potential to address planned relocation, since adaptation is one of the main priorities of the UNFCCC. Even though it was stated that planned relocation as a climate change adaptation strategy is currently largely undeveloped, the way to improve the UNFCCC framework is outside the scope of this paper.

129 Limon, *supra* note 99, p. 567.

130 Willcox, *supra* note 89, p. 13.

131 UN Common Statement of Understanding, *supra* note 118. Among these principles are universality and inalienability; indivisibility; interdependence and interrelatedness; non-discrimination and equality; participation and inclusion; accountability and the rule of law.

132 N. Bitá, ‘Island Evacuation a Greenhouse Solution’, *The Weekend Australian*, 8-9 June 1996, p. 8.

In case other feasible mitigation and adaptation measures have been exhausted and the only remaining option is relocation, a human rights-based approach presents a number of questions to be taken into account through the planning and implementation of planned relocation as an adaptation strategy:

- 2) *Are people induced to relocation well informed about the risks and threats they are facing?*
- 3) *Do these people realize the necessity to resettle and agree with it?*
- 4) *Are affected people sufficiently involved in the discussions, planning and implementation?*

As the example of Tuvalu has demonstrated, when people are not convinced of the necessity to move and are greatly reluctant to leave, their relocation breaches the *right not to be forcibly evicted*, as it will be carried out against people's will. It is crucial that people at risk are involved in the consultations, which will allow them to realize the pressing threat and to accept the relocation option. Duty-bearers should share the information about the risks with affected community members and engage them in planning and implementation.¹³³

During the preparation of a plan for relocation and through the actual implementation of this adaptation measure, a full understanding and consideration of the human rights at risk can ensure that crucial points are not overlooked. Otherwise, as the UN International Council on Human Rights Policies states, these policies may themselves undermine human rights.¹³⁴

Planning and the implementation of the planned relocation should likewise be sensitive to numerous questions, some of which are:

- 5) *Are the vulnerable human rights of relocated people (rights noted in Section 3.1.) secured and accessible?*
- 6) *Will the rights of the populations in receiving areas be affected?*

This means that there should be a sufficient number of schools, hospitals, and jobs available. Since the circumstances at the new destination can be dramatically different, it is also vital to equip people with the knowledge and skills that will help them to earn a living there and to eventually re-establish themselves.¹³⁵ Furthermore, since the rights of the population in the receiving area can also be compromised by the increased demand on services, the employment market and infrastructure, the rights of these people also require attention.

As becomes clear from the analysis of the implicated rights in Section 3.1, relocation is associated with not only material losses. Adger notices that in general indirect losses are overlooked in environmental decision-making.¹³⁶ He claims that in spite of the OHCHR's instructions, during the assessment of limits to adaptation strategies, only assessable losses, such as ecological, physical and economic losses are considered by policy-makers,¹³⁷ while cultural and societal losses are often overlooked in environmental decision-making and analysis. Cernea confirms in his analysis of past experiences with resettlement due to development projects that planners tend to overlook socio-cultural and psychological dimensions and rarely take into account the importance of reintegration within host populations and compensation for these community-related losses.¹³⁸ A human rights-based approach can bring the attention of policy/decision-makers to such questions as:

- 7) *Are cultural rights and the cultural dimension of other rights acknowledged?*

This means that not only the *right to take part in cultural life* should be addressed more carefully, but also that the sensitive and often neglected dimensions of the material rights (such as the *right to adequate housing*) should be ensured.

Another relevant question in view of a human rights-based approach is:

- 8) *What kind of compensation is appropriate, especially for cultural or societal losses?*

As has been suggested by Barnett and Webber, compensation should be provided according to the average standards and prices of the receiving region and should enable people to have an average standard of

133 M.A. Orellana, 'A Human Rights-Based Approach to Climate Change', in CIFEDHOP (José Parra, coord.), *The Human Rights-Based Approach: A Field of Action for Human Rights Education*, 2012, p. 6.

134 Humphry, *supra* note 34, p. 20.

135 Hugo, *supra* note 20, p. 3.

136 Adger et al., *supra* note 84, p. 337.

137 *Ibid.*

138 Cernea, *supra* note 28.

living in the receiving community.¹³⁹ Compensation according to the human rights-based approach has to guarantee that not only financial losses are taken into account, but cultural and societal losses as well. Furthermore, a human rights-based approach should ensure that compensation is available to the people in the host areas as well, due to resource losses on account of the migrants.

After the relocation has taken place, during the evaluation stage the question that emerges from a human rights-based approach is:

9) *Is the evaluation stage long enough?*

Apart from the rights which can be restored in a considerably short period of time (the *right to adequate food, the right to water, the right to adequate housing*), there are certain rights which take longer to be restored. Therefore, during the evaluation stage it has to be analysed whether the *right to education* has been sufficiently restored and that people have integrated into the community well enough to enjoy their *right to take part in cultural life*.

These are just several questions that can be motivated by a human rights-based approach. However, even those few show the sensitivity of the suggested approach and its added value to the science-led and technical climate change adaptation process. A further understanding of these questions at the academic and political levels is needed.

4. Conclusions

This article has demonstrated the urgency to re-establish planned relocation as an adaptation strategy. Since this strategy is officially acknowledged, and since some states have announced the fact that the relocation might be the only feasible option for their nations, we can no longer accept that this strategy remains neglected. This article has demonstrated that a rejection of planned relocation is to some extent justifiable, since this strategy can indeed lead to enormous human rights violations. Nevertheless, it was also argued that this reasoning is weak and inappropriate in a world where the land of millions of people is threatened by inundations, or other severe impacts of climate change. Therefore, the need to strengthen planned relocation and to develop this adaptation strategy was emphasised.

The article argued that an acknowledgment and understanding of the risks associated with planned relocation is a crucial step towards the successful implementation of this adaptation response. Therefore, the potential impacts of the planned relocation on the various human rights at stake (*i.e. the right to life, the right to adequate food, the right to water, the right to adequate housing, the right to work and education, cultural rights, the right to development, the right to self-determination, etc.*) were demonstrated. Ultimately, it was argued that since at the core of this adaptation strategy is actually a human suffering, it is important that the protection of human rights is the main concern of policy and decision-makers. Therefore, a forward-looking human rights-based approach was promoted as one of the key elements in making planned relocation a more successful and appropriate adaptation strategy. It was also shown how this approach can positively influence each stage of relocation, from planning to implementation, to evaluation. Namely, this article, building upon a human rights-based approach way of thinking, suggested a list of questions that need to be addressed by policy-makers and planners: *Is the planned relocation an option of last resort? Are people induced to relocation well informed about the risks and threats they are facing? Do these people realize the necessity to resettle and agree with it? Are affected people sufficiently involved in the discussions, planning and implementation? Are the vulnerable human rights of relocated people (rights noted in Section 3.1.) secured and accessible? Will the rights of the populations in receiving areas be affected? Are cultural rights and the cultural dimension of other rights acknowledged? What kind of compensation is appropriate, especially for the cultural or societal losses? Is the evaluation stage long enough?* Taking these questions into account can strengthen the practice of planned relocation as an adaptation strategy.

What the practical implementation of a human rights-based approach exactly looks like is still an unanswered question. Additional research is required to discover the technical and practical consequences of planned relocation, including which actors should be involved, and who should take the lead and bear

139 Barnett & Webber, *supra* note 22, p. 39.

responsibilities throughout the process. Apart from research, political involvement and dialogue between developed and developing countries are vital. It can already be suggested that the expertise accumulated under the UNFCCC is essential and that National Adaptation Programmes of Action (NAPAs) will play an important role, since most of the initial planning is made at the local level.

However, first the attitude towards the idea of planned relocation as an adaptation strategy must change. The realization that a human rights-based approach can safeguard against the negative implications associated with planned relocation can finally bring this strategy out of the shadow, and foster further research and its development. Should this be achieved, there is a hope that the next story similar to the one of Jyotsna Giri has a better ending. ¶

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